



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1125

RONALD R. SILVERTON, Petitioner,

vs.

CALIFORNIA ADULT AUTHORITY, Respondent.

Crim

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE
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The petitioner Ronald R. Silverton respectfully prays that a writ of certiorari issue to review the order of the Court of Appeals for the Ninth Circuit, denying a certificate of probable cause for appeal from a judgment of the district court dismissing a petition for writ of habeas corpus.

ORDER BELOW

The order of the Court of Appeals for the Ninth Circuit, denying a certificate of probable cause, appears as number "1" in the Appendix hereto. The order rendered by the District Court for the Central District of California,

denying a certificate of probable cause, appears as number "2" in the Appendix hereto. The District Courts judgment denying petitioner's Petition for Writ of Habeas Corpus appears as number "3" in the Appendix hereto. The Report and Recommendation of the United States Magistrate appears as number "4" in the Appendix hereto.

JURISDICTION

The order of the Court of Appeals for the Ninth Circuit was entered on November 11, 1975. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the Court of Appeals has sanctioned a departure from the accepted and usual course of judicial proceedings such as to call for an exercise of the Supreme Court's power of supervision?

PROVISIONS OF LAW INVOLVED

1) The holding of Moore v Dempsey (1923) 261 US 86, 43 S Ct 265, 67 LEd 543: It is never too late for courts in habeas corpus proceedings to look straight through procedural screens in order to prevent forfeiture of life or liberty in flagrant defiance of the constitution.

2) 28 U.S.C. §2254. Federal Rules of Appellate Procedure §22b: Each provides when a "certificate of probable cause" comes into play.

STATEMENT OF THE CASE

Petitioner, a 44 year old attorney admitted to practice in the State of California in 1958, and practicing continuously therein until January 28, 1972, was convicted in 1972 of the crimes of criminal conspiracy (California Penal Code §§182.1 & 182.4) and solicitation of a crime (Penal Code §653f).

At the time of his conviction, Petitioner was the sole owner of a law firm employing 65 persons. His reputation in the field of law was good. He had been commended by the California Legislature and by the County of Los Angeles Board of Supervisors. He had just prior to January 1972 announced that he was going to run for District Attorney of Los Angeles County. (Transcript of testimony before the Local Administrative Committee of the California State Bar, hereinafter abbreviated as "a/t", which is on file before this court "In The Matter of Disbarment of Ronald Robert Silverton - D-55", at page 106, lines 25-28; and page 98, lines 5-9.)

Mr. Rooker, an investigator for the Los Angeles District Attorney's Office, in an effort to get something on Silverton (petitioner herein) despite what the actual facts might be (a/t: page 115, line 22 - page 116, line 5; The Preliminary Hearing Transcript, hereinafter referred to as "p/t", which is currently lodged with the California Supreme Court, at page 92, fifth sentence from bottom of the page - bottom of the page.), barged

into Silverton's office and said to Silverton words to the effect, "Well, I'm not hurt but I was in an accident, and my car was severely damaged." Silverton said to him, "if you are not hurt I don't want the case. Sometimes, however, people don't know whether they are hurt, and perhaps you should be examined." During this time - not more than five minutes - Silverton had many phone calls, a client in the office, and was signing different things. (a/t: page 95, lines 1 - 11; p/t: page 44, lines 5 - 21).

Based on mere association, Silverton had ascribed to him the acts of his "co-conspirators", Betty Rose in informing Rooker that Silverton would aid him in recovery of money from his auto accident without being injured; and Dr. Gerard Stavish who examined Rooker twice though Rooker said that he wasn't injured. Each of these "co-conspirators" testified before the Local Administrative Committee of the California State Bar, and under oath denied that Silverton had any involvement at all with them or either of them, in connection with their activities with Rooker. (a/t: pages 40 - 63, for the testimony of Dr. Stavish; pages 63 - 76, for the testimony of Betty Rose.)

On April 11, 1972, Silverton appealed from the judgment of conviction. On October 31, 1972, Silverton's judgment of conviction was affirmed by the Court of Appeal Second Appellate District, State of California. (This unpublished opinion is on file with the California Supreme Court.)

Silverton thereafter appealed the judgment of conviction to the Supreme Court of the United States. This court on May 21, 1973 dismissed the appeal on the jurisdictional statement for want of a substantial federal question. (1973, 412 U.S. 901; reh'g denied - 1973 - 94 S. Ct. 39).

On September 26, 1973 the Superior Court of the State of California, in and for the County of Sacramento in proceeding number 43317 "In the Matter of the Application of Ronald R. Silverton for a Writ of Habeas Corpus" ordered that the Los Angeles Superior Court give to Silverton an evidentiary hearing on the grounds in Silverton's Application, which were:

1. In arriving at his judgment that Silverton was guilty, Judge William A. Caldecott, the trial judge to whom the matter of Silverton's guilt or innocence was submitted, considered contentions brought to his attention outside of the courtroom and outside of the presence of Silverton and his advisory counsel. The nature of these contentions were unknown to Silverton or his advisory counsel, and were of a nature opposite to Silverton's protestations of innocence with regard to the charges to be considered by Judge Caldecott.

2. Silverton waived his right to a jury trial, and waived his right to confront the witnesses against him, and agreed to submit the matter of his guilt or innocence to the trier of fact, Judge

William A. Caldecott, on the facts as set forth in the transcript of the preliminary hearing because Silverton believed that he had received from his advisory counsel, Sharon Freis, an accurate account of the remarks attributed to Judge Caldecott by Attorney Freis. These remarks were (unbeknownst to Silverton) made in Judge Caldecott's chambers, not on the record, in a private interview between only Judge Caldecott and Attorney Sharon Freis, while the latter was acting in her capacity as advisory counsel for Silverton. These remarks took place during, or immediately after the consideration by Judge Caldecott of Silverton's motion to dismiss the information on the grounds that the facts shown in the Preliminary Transcript were not sufficient to show even a reasonable "suspicion" that Silverton was guilty of the offenses charged. Silverton did not consent to said private interview, nor did he have any prior knowledge thereof, though he was in propria persona.

During this interview Judge Caldecott made statements to Mrs. Freis which she reasonably construed as an expression of an opinion on the case which was before him, ie: as to whether or not the Preliminary Transcript showed Silverton to be guilty. When Mrs. Freis relayed these statements to Silverton and to Silverton's other advisory counsel, Robert Harris, these statements did reasonably induce Silverton to waive a jury trial and his right to confront witnesses against him, and to submit the matter of his guilt or innocence to

Judge Caldecott on the transcript of the Preliminary Hearing. These statements incorrectly prognosed the opinion of Judge Caldecott on Silverton's guilt.

An evidentiary hearing was held on the afore-expressed contentions of Silverton, in the Los Angeles Superior Court on January 9, 10, and 11th of 1974; Los Angeles County Superior Court Case number 2-A 281235. At that hearing Silverton's diligence in presenting his grounds of collateral attack, based on his recent discovery of them, was stipulated to by the Attorney for the Respondent therein, the Los Angeles County District Attorney. (Page 111, lines 1 - 10 of the transcript of the evidentiary hearing; copies of which are lodged with the Clerk of the California Supreme Court and with the United States Federal District Court, for the Central District of California, in the latter court as exhibit "D" to the Petition for Writ of Habeas Corpus filed therein (Case No. CV 74-1636 MML(T)).

The Los Angeles County Superior Court, after the evidentiary hearing, denied petitioner's Petition for Writ of Habeas Corpus filed therein. On March 8, 1974 a timely Petition for Writ of Habeas Corpus was filed in the Court of Appeal of the State of California, Second Appellate District -2d Crim No. 24943, on the same grounds raised in previous petition which resulted in the evidentiary hearing aforementioned; and in addition raised the following five grounds:

1 & 2: That the fact finding

procedure employed by the State of California in the evidentiary hearing was not adequate to afford a full and fair hearing because:

1. The Los Angeles Superior Court denied Silverton's motion for discovery, timely and properly made for information that would have been helpful to Silverton at the evidentiary hearing; while permitting to the District Attorney, who represented Respondent at the evidentiary hearing, discovery, over the proper and timely objection of Silverton.

2. Denial by the Los Angeles Superior Court, the Honorable James Kolts, Judge presiding, of Silverton's motion to disqualify said Judge James Kolts under the authority of California Code of Civil Procedure §170(5) (a copy of this statute appears as exhibit number "5" in the Appendix hereto) from sitting as the trier of fact at the evidentiary hearing granted by the Sacramento Superior Court. This erroneous denial denied Silverton the same protection of California Code of Civil Procedure §170(5) permitted all other persons using the California Superior Court; and compelled Silverton to use the single summary challenge permitted under California Code of Civil Procedure §170.6 (a copy of this statute appears as exhibit number "6" in the Appendix hereto) to disqualify Judge James Kolts from sitting as the trier of fact at the evidentiary hearing. This use of the single summary challenge precluded Silverton the option of its use to disqualify the Honorable C. A. Bauer,

Judge assigned by the Los Angeles County Presiding Judge to hear the evidentiary hearing, and who did in fact hear it.

3 & 4 & 5: The Los Angeles Superior Court holding the evidentiary hearing failed to provide a fair hearing because:

3. The Court denied at the evidentiary hearing Silverton's request to introduce evidence of the results of polygraph examinations of crucial witness Steven L. Dobbs (an Attorney who testified that Judge Caldecott told him words to the effect that he "had to find Silverton guilty because he received so much pressure to do so [from outside the courtroom]"). At the time of this request the reliability of the polygraph in general, and its reliability in the specific examination of Mr. Dobbs was uncontradictedly demonstrated in Silverton's offer of proof. This offer of proof, which the court denied, included an offer to the court to submit the witness Dobbs to an examination by polygraph by any competent polygraph operator chosen by the court or respondent; the results of said examination would be entered into evidence; and that the cost of said examination would be borne by Silverton. (Transcript of the evidentiary hearing, page 170, line 11 - page 192, line 16).

4. The Court denied at the evidentiary hearing Silverton's request to introduce into evidence the testimony of Betty Rose and Dr. Gerard Stavish (the two "co-conspirators" whose conduct as ascribed to Silverton was the basis of Silverton's conviction). Silverton's

offer of proof was made that each of the "co-conspirators" would testify to the effect that each had notified Silverton just prior to his submission of the matter on the transcript, that each would testify truthfully on the witness stand, if the matter went to trial, that Silverton had no involvement with either of them with regard to the conduct constituting the basis of the prosecution. (Transcript of the evidentiary hearing, page 93, line 12 - page 102, line 26).

5. Flagrant, calculated misconduct on the part of respondent's counsel, the Los Angeles County District Attorney, which undoubtedly prejudiced the trier of fact at the evidentiary hearing against Silverton. Over the objection of Silverton, the counsel for respondent in bad faith asked a most scurrilous series of questions to a character witness for Silverton (a California Superior Court Judge). These questions impugned the ethics, honesty, and integrity of Silverton. Respondent's counsel, the District Attorney, later withdrew the questions and apologized to Silverton, admitting that he knew better than to ask questions that he was not prepared to prove up the answers to. However, this apology before the court contained inferences of the bad character of Silverton, and was itself designed to taint the trier of fact. (Transcript of evidentiary hearing pages: 201, lines 13 - 24; 194, line 5 - page 207, line 8; 201, lines 13 - 24).

On April 3, 1974 the California Court of Appeal denied the Petition for

Writ of Habeas Corpus. On April 3, 1974 a Petition for Hearing on this denial was filed with the California Supreme Court, it was denied on May 1, 1974.

On June 12, 1974 Silverton filed a Petition for Writ of Habeas Corpus in the United States District Court, Central District of California - Case Number CV 74-1636-MML(T). This petition contained each and all of the contentions set forth in the aforementioned Petition for Writ of Habeas Corpus filed with the California Court of Appeals. It was denied on March 31, 1975 by a judgment that adopted as its reasons the Report and Recommendation of the Magistrate (said judgment is exhibit "3" in the Appendix hereto, and the Report and Recommendation of the Magistrate appears as exhibit "4" in the Appendix hereto). On April 16, 1975 Silverton applied to the Federal District Court for a Certificate of Probable Cause, so that he could appeal the judgment of March 31, 1975 denying his afore-stated petition. The application was denied on August 21, 1975 by an order of the Federal District Court (which order appears as exhibit "2" in the Appendix hereto) which gave as its reasons for denial as follows: "for the reasons set forth in the Report and Recommendation of the United States Magistrate". This was the same Report and Recommendation which the court cited for its denial of the Petition itself. On September 17, 1975 a Request for Issuance of a Certificate of Probable Cause was made to the Judges of the United States Court of Appeals for the Ninth Circuit pursuant to Federal Rule of

of Appellate Procedure Number 22(b), so that an appeal could be taken from the afore-mentioned judgment of March 31, 1975, denying Silverton's Petition for Writ of Habeas Corpus. On November 11, 1975 the United States Court of Appeals for the Ninth Circuit, denied petitioner's request for said Certificate of Probable Cause, citing as its reason that the petition was "legally frivolous for the same reasons expressed by the District Court".

The order of the United States District Court denying petitioner's application for a Certificate of Probable Cause, contained two obvious errors, which the United States Magistrate, acting without benefit of the Court corrected. (Said order of correction appears as exhibit number "7" in the Appendix hereto):

First: the Court erroneously designated the capacity of petitioner as "in forma pauperis".

Second: the Court Referred to a Report and Recommendation of the United States Magistrate, which was not sent, or filed along with the Order.

REASONS FOR GRANTING THE WRIT

1. The United States Court of Appeals for the Ninth Circuit abdicated its appellate responsibility by allotting too great a weight to the Report and Recommendation of the United States Magistrate. This Report and Recommendation was the sole reason given by the

United States District Court for its judgment denying petitioner's Petition for Writ of Habeas Corpus; and was the sole reason given in its order denying petitioner's application for a certificate of probable cause to appeal said judgment; and was the sole reason given by the United States Court of Appeals in refusing petitioner's application to it for a certificate of probable cause to appeal said judgment of the United States District Court.

2. The Petition for Writ of Habeas Corpus filed by petitioner with the Federal District Court clearly shows therein:

a) That petitioner was innocent of the crime of which the State Tribunal convicted him.

b) That the original tribunal, the Judge of the State Court, was so influenced by matters outside the evidence and the courtroom that the petitioner did not receive the kind of trial that the United States Constitution guarantees.

c) That the claim of petitioner that his constitutional guarantees have been violated are based on facts outside the record and only collateral attack on the State judgment can vindicate the claim.

d) That the procedure the State provided in the habeas corpus evidentiary hearing on the above three contentions was not sufficient to reliably find the

relevant facts.

The decision of Jones v Cunningham (1963) 371 US 236, 83 S Ct 333, 9 LEd 2d 285, 92 ALR2d 675, holds that state prisoners free on parole are in "custody" and can challenge the validity of their conviction. This decision has been amplified by the holding in Carafas v LaVallee (1968) 391 US 234, 88 S Ct 1556, 20 LEd2d 554: that the expiration of a prisoners sentence does not moot a habeas corpus case commenced before release because the judgment of conviction carries with it continuing collateral consequences.

In the instant case petitioner was on July 3, 1976 disbarred by the California Supreme Court solely because of the conviction which is here attacked. This disbarment was the sole reason for the order of January 19, 1976 of this Honorable United States Supreme Court disbarring the petitioner herein from practicing law before it.

CONCLUSION

This Honorable Court should perform its "perhaps most exalted function" (Moore v Dempsey [supra]) and issue a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit, denying a certificate of probable cause to petitioner for appeal from a judgment of the United States District Court dismissing a Petition for Writ of Habeas Corpus.

Respectfully submitted,

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Separate
APPENDIX--See Subject Index
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